IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.776 OF 2007

Kirti Manikchand Dugad & Ors. ...Petitioners

vs.

Sudhir Punamchand Parakh & Ors. ...Respondents

Mr.G.S.Godbole for the Petitioners
Ms Lalita Panchakshri for Respondent No.1

CORAM: A.S.OKA,J.
DATE : JUNE 15, 2007.

P.C.:

1. Heard Advocates for the Petitioners and the Advocate for the first Respondent. The first Respondent is the original Plaintiff. The Petitioners are the original Defendant Nos.6 to 9. The Petitioners made an Application at Exh.155 in the pending suit filed by the first Respondent praying that the order dated 4th October 2002 below Exh.38 should be clarified by declaring that the said order does not prevent the Petitioners from carrying out repairs to their bungalows. Another prayer is made therein for permitting the Petitioners to carry out repairs in accordance with the report submitted by the Architect. The said Application has been rejected by the impugned order dated 10th November 2006.

2. The learned Advocate for the Petitioners pointed out that the petitioners are willing to carry out the repairs in terms of the report of the Architect at their own costs without

claiming any equity. He submitted that as the Petitioners are admittedly in possession, the Trial Court ought to have permitted them to carry out repairs. The learned Counsel for the first Respondent invited my attention to the order below Exh.38 passed by the Trial Court which restrains the Defendant Nos. 1 to 12 in the suit from altering the present structures in the suit property and especially the property bearing survey No.1 and 2 i.e. Plot Nos.4 and 5 and from making any construction thereon. She, therefore, submitted that the Petitioners are not entitled to carry out any repairs.

3. It is not in dispute that the Petitioners are in possession of two bungalows situated on plot Nos.5 & 7 more particularly described in the Application at Exh.155. I have perused the report of the Architect. If the Petitioners are permitted to carry out the repairs at their own costs without claiming any equity, no prejudice will be caused to the first Respondent-original Plaintiff. The work of repairs can be permitted to be carried out under the supervision of the Court Commissioner appointed by the Trial Court at the cost of the Petitioners.

4. Hence, Petition is disposed of by passing the following order :

i) The Petitioners are permitted to carry out the repairs to

the two bungalows more particularly described in the prayer clause (b) of the Application at Exh.155 in terms of the report dated 3rd June 2006 of the Architect M/s.Dilip Zagade and Associates.

ii) The Trial Court will appoint any competent person as the Court Commissioner at the cost of the Petitioners and the petitioners will carry out the work of repairs under the supervision of the Court Commissioner.

iii) The Petitioners will carry out the construction at their own costs. The repairs will be confined to the work mentioned in the report dated 3rd June 2006.

iv) It is made clear that the Petitioners will not be entitled to claim any equity or right on the basis of the repairs carried out by them . This order is passed without prejudice to the rights and contentions of the parties in the pending suit.

v) Impugned order is modified accordingly. Writ Petition is disposed of in above terms.

vi) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE